

-----Original Message-----

From: Sierra Dawn Stoneberg Holt [mailto:sierra@nemont.net]

Sent: Thursday, August 18, 2011 9:23 PM

To: Loble, Bruce

Subject: Re: Water Adjudication Advisory Committee - Exempt From Filing Claims - Pursuit of Options

Greetings again:

After sleeping on my reply, I have finally realized my greatest concern regarding mandatory filing of all claims (which is the only way I can see to make the adjudication complete, federally legal, comprehensive, and accurate.)

It is this quote: Montana Water Court Case No. 40E-A: [Prior to 1973, a water right appropriated on the public domain in accordance with Montana law or custom generally vested in the appropriator. (p. 13)]

While this finding of the Water Court seems fairly clear-cut to me, since at least 1972, people have been consistently told the opposite by the DNRC, BLM, etc. Everyone with valid, existing, stock rights on federally or state administered land with a priority of... say, 1930 or before that who believes what they have been told for at least 40 years by the DNRC, BLM, etc. will fail to file those claims and lose them because of failure to file, even though the Water Court pretty clearly found in their favor.

Therefore, I think that any mandatory filing would have to be accompanied by contact from a reputable state agency clearly explaining the finding of the Water Court, and telling people that if these rights exist, they ought to be filed.

My sincere thanks,  
Sierra

On Wed, 17 Aug 2011, Sierra Dawn Stoneberg Holt wrote:

> Greetings:

>

> I am responding to the proposals listed at

> <http://courts.mt.gov/water/WAAcommittee/default.mcp>

>

> First, no proposal except Maxine Korman's mentions vested rights.

>

> Montana Water Court Case No. 40E-A:

> [Prior to 1973, a water right appropriated on the public domain in

> accordance with Montana law or custom generally vested in the appropriator.

> (p. 13)] seems fairly clear to me, and I cannot help but wonder what

> has happened to all those pre-1973 rights that supposedly vested in

> the appropriator. It seems odd to me that they can have simply

> disappeared and be no longer worthy of consideration.

>

> I recognize and sympathize with John Bloomquist's concern that the  
> filings be voluntary and not result in loss of rights. I don't think  
> anyone wants any of these rights to be lost to a failure to file.  
> (Although they seem to be de facto lost already at the moment despite  
> their owners following all the applicable laws and following official  
> advice.) Still, what good will the adjudication be, if it is riddled  
> with an unknown number of unclaimed rights that are supposedly still  
> valid. It doesn't seem practical to me to issue a decree, and then  
> follow that up by a process of adding an unknown number of claims of  
> unknown amount to that decree. Still, having an actual mechanism to  
> have these rights adjudicated would probably be an improvement over the  
current state.

>

> In general, I am sympathetic to Don MacIntyre's suggestions and  
> opinions. I am concerned however, that the case of Idaho seems to me  
> to indicate that an adjudication including voluntarily filed rights is  
> federally invalid and unlawful. I'd hate to see that happen. If I  
> wasn't concerned about that and if I wasn't concerned about the  
> apparent evaporation of vested rights, I would really like the idea  
> that these claims can be filed at any time and will in general enjoy  
> the same benefits of "prima facie evidence" as claims that were  
> required to be filed earlier, but should not burden the adjudication  
> process unduly, and may include a burden of proof in some situations.

>

> Michael Cusick's proposal seems to rely on the belief that following  
> the law and the advice of state employees was untimely and was a  
> failing by people that "have already had an opportunity to file and  
> did not avail themselves of that opportunity." The assumption seems  
> to be that these people should be grateful to have any vestiges of rights  
remaining to them.

> I can understand this viewpoint, but disagree strongly.

>

> The DNRC's background considerations are very important in my opinion,  
> particularly the first three. The DNRC lays out fairly reasonable options.  
> The permissive filing sounds tempting, since there is no forfeiture  
> (something no one wants.) I remain concerned that this could  
> invalidate the entire adjudication.

>

> I agree with Maxine that I would like to see pre-1972 rights filed  
> with a Declaration of Vested Water Right. I wish it could be  
> voluntary, but I can't believe the adjudication would be in accordance  
> with federal law if it was. Forfeiture is harsh, but, as was pointed  
> out, that is the only reasonable consequence of failing to do a  
> mandatory filing. If filing isn't mandatory, then the adjudication  
> isn't complete, and if it isn't complete, what is the point? I do not  
> believe that any number of missed non-mandatory deadlines is equivalent to  
missing a mandatory deadline.

- > Therefore, I do not believe that past, non-mandatory deadlines should
- > be made retroactively mandatory now, and those prior rights liquidated
- > for failure to file in a timely fashion.
- >
- > Thanks so much for allowing me to voice my opinion, Sierra Dawn
- > Stoneberg Holt